IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISIDICTION

CRIMINAL APPEAL NO. 173 OF 1994

Goraknath Kaluram Shinde .. Appellant (Orig.Accused)

v/s.

The State of Maharashtra .. Respondent (Orig.Complt.)

Shri Prakash Naik , Advocate for Appellant.

Shri B.H.Mehta, APP for the State-Respondent.

CORAM : A.S. AGUIAR, J.

DATE : 4TH AUGUST, 2004.

ORAL JUDGEMENT:

1. The Appellant/Accused Goraknath Kaluram Shinde challenges his conviction by the Additional Sessions Judge, Pune for the offence punishable under Section 306 and 498(a) of Indian Penal Code for abetting the suicide committed by his wife Trupti Kaluram Shinde. The Additional Sessions Judge, Pune by his judgement and order dated 18th

February, 1994 convicted the said Appellant for offences punishable under Section 306 and 498(a) of Indian Penal Code and sentenced him to suffer R.I. for 5 years and to pay a fine of Rs.3,000/- in default to suffer R.I. for one year for the offence punishable under Section 306 of Indian Penal Code and to suffer R.I. for two years and to pay a fine of Rs.1,000/- in default to suffer R.I. for six months for the offence punishable under section 498(A) of Indian Penal Code.

2. The Appellant/Accused married the deceased Trupti on 16th June, 1992 at village Shindewadi. It was an arranged marriage. After the marriage, Trupti started residing with the accused at village Shindewadi, Taluka-Bhor, District-Pune. After the marriage, Trupti visited her parents house at Bombay only twice, once, for Nagpanchami and thereafter again for Diwali and on both these visits she complained to her parents and brothers of illtreatment at the hands of the accused stating that the accused suspected her of having illicit relations with some persons from her maternal house and thereby the accused used to mentally tortured

her. He even physically assaulted her. When she complained on her first visit during Nagpanchami, her brother P.W.No.2 Chandrakant questioned the accused about the harassment. The accused thereupon got annoyed and started accusing P.W.No.2 Chandrakant of having illicit relations with his own sister Trupti. The accused thereupon left the house leaving Trupti at her parents place and went to his village Shindewadi. Two days later, the father of the accused, Kaluram Shinde came to house of Trupti's parents. Referring to Trupti's complaint Kaluram assured, them that his son Goraknath would not, henceforth harass or illtreat their daughter in future.

3. However, subsequent to this, Trupti sent letters to her brothers at Bombay informing them of the day to day illtreatment she was receiving at the hands of the accused. The said letters are at Exhibit 16 to 24. The main grievance of Trupti, as disclosed in the said letters, is that she was being harassed and mentally tortured by her husband and of his taunting her about her having illicit relations with her relatives. On account of this

suspicion, he even assaulted her, beat her and teased her. Hence, P.W.No.3 Ashok another brother of Trupti visited her at Shindewadi around the time of Ganpati festival. When he reached there he did not find Trupti at home. He learnt that Kaluram Shinde, father of the accused, had taken her for medical treatment to the hospital of one Dr.Sheela at Pune. Hence, P.W.No.3 rushed to Pune but on his reaching to the said hospital, he was informed that Trupti had already left and returned to Shindewadi. Hence he again went back to Shindewadi and met Trupti at her house. It was at this meeting that Trupti told him that she being assaulted and beaten by her husband and that is why her father-in-law Kaluram had taken her for medical treatment to Pune. Trupti's father-in-law, Kaluram assured P.W.No.3, brother of Trupti that his son would not in future illtreat Trupti.

4. According to the prosecution sometime prior to Diwali, another brother of Trupti, namely P.W.No.5, Dilip, visited Trupti at Shindewadi to take her for Diwali. The Accused abused Dilip and told him that if he wants to take Trupti alongwith

him to Bombay he should marry her. Despite the husband's protests P.W.No.5 Dilip brought Trupti, home for Diwali. The accused came to the house of Trupti's parents on the next day of Diwali, that is, on 'Bhaubhij' and again picked up a quarrel with Trupti's brothers and stated that he would not take Trupti back to his house at Shindewadi and thereupon returned on the same day to his house at Shindewadi. Two to three days later, Dilip P.W.No.5 took Trupti to her husband's house at Shindewadi and told the father of the accused Kaluram to convince his son not to harass Trupti in future. He then returned to Bombay.

5. On 10th December, 1992 Trupti's brother P.W.No.2 Chandrakant went to Shindewadi to bring his sister Trupti to Bombay to see her father who was in critical condition. However, Trupti was not found in the house. On making enquiry with the accused, he was informed that Trupti was not in the house since 2 p.m. of that day and that he (the accused) did not know the whereabouts of Trupti. On hearing this, P.W.No.2 got annoyed and questioned the accused whether it was on account of

his harassment that Trupti had left the house. However, Kaluram, father of accused intervened and told P.W.no.2 that they would be searching for Trupti. But till the evening of the next day, there was no trace of Trupti. On the same day, P.W.No.2 received a message from Bombay that his father had expired and hence he was compelled to return to Bombay. After attending the funeral and obsequial ceremonies of his father, P.W.No.2 went back to Shindewadi on 14th December, 1992 but found that Trupti had not yet been traced. At about 11 a.m. on that day, P.W.No.2 learnt that a dead body was found floating in the nearby well. On reaching there, he found that it was the body of his sister, Trupti. Chandrakant then informed the police. The dead body was taken out from the well. Inquest panchanama was drawn from the dead body was referred for post mortem examination. P.W.No.2 went to Bhor and made a report, Exhibit 25, on the basis of which offence came to be registered. After making necessary investigations, police filed the chargesheet against the accused in the Court of Judicial Magistrate First Class, Bhor. The case was then committed to the Court of Sessions since

the offence is exclusively triable by the Court of Sessions. Charges were famed against the accused under Section 306 and 498(a) of the Indian Penal Code. Charges were read over and explained to the accused who pleaded not guilty and claimed to be tried.

6. On the basis of the testimony of P.W.No.2, 3 and 5, the brothers of deceased Trupti, who have deposed to the history of mental and physical torture of Trupti at the hands of her husband accused and relying on the letters Exhibit 16 to 24 which were allegedly written by deceased Trupti to her brothers and sent to them by post at their address at Bombay, and in view of the presumption under section 113(a) of the Evidence Act, the learned Trial Court came to the conclusion that Trupti had committed suicide by jumping the well and that the accused husband had abetted into the commission of suicide by his sister Trupti by subjecting Trupti to cruelty and harassment by suspecting her character and accordingly convicted the accused for the offences punishable under Section 306 and 498(a) of Indian Penal Code.

7. Learned Advocate for the Accused/Appellant has challenged the testimony of the witnesses on the ground that they are closely related to the deceased Trupti being her brothers. Several omissions have been pointed out in the evidence of P.W.No.2 Chandrakant Yadav. It is pointed out that P.W.No.2 had told the police that Kaluram Shinde had on being told of the harassment of Trupti, assured him that he shall not harass Trupti in future. However this portion is not reflected in his statement made before the police. Again in the evidence of P.W.No.3. following omissions have been brought on record. It is pointed out that P.W.No.3 has stated as follows, "While recording my statement, I have informed the police the incident of illtreatment met out by accused to Trupti and her father-in-law taking her for medical treatment at Pune, at the time of my visit to her house at Ganpati festival. I have told the police the visit of Kaluram to our house at Bhor for taking Trupti to the house of accused and our complaint to him of the illtreatment to Trupti and his promise to us that he shall see that no such illtreatment in

future is caused to Trupti. I am unable to state why this reason did not find place in my police statement." Omissions have also been brought out in the evidence of P.W.No.5 Dilip, another brother of Trupti in connection with the letters written by Trupti to them. P.W.No.5 has stated that the portion marked ‘A’ in his police statement is not as per his say. It is sought to be contended by Learned Advocate for the accused Appellant that the said witness have resorted to making improvements in their evidence to fill up the lacunae in the prosecution’s case and therefore they should not be believed. However, the omissions and contradictions brought out in the evidence of the said witnesses who are brothers of deceased Trupti, are not fatal to the prosecution case and no reason to discard their testimony.

8. The basic prosecution case is that accused and Trupti got married on 16th June, 1992 and within six months, Trupti committed suicide by jumping into the well. In the short span of six months, Trupti returned to her parents house twice that is, for the first time for Nagpanchami,

sometime in August 1992 and the second time for Diwali in October 1992. During her first visit Trupti complained of the illtreatment and harassment by her husband/Appellant and the only cause for that was his suspicion, that she was having illicit relations with her own relatives. After Nagpanchami when she went back to her husband's house at Shindewadi, Trupti sent three letters to her brothers Exhibit 17, 18 and 19 complaining of harassment and false charges being made by her husband of her having illicit relations outside the marriage. Again after returning to her husband's house after the second visit to her parents during Diwali, Trupti sent three other letters Exhibit 20, 21, 22 and 23 complaining of the same harassment and imploring her brothers to take her back to her parents house and not to leave her at the mercy of the accused as her husband, as she feared her husband would not let her to live. These letters have been sent by post and they are in the handwriting of the deceased Trupti. The genuineness of these letters have not been seriously challenged though it has been suggested that the letters were subsequently got written by

the twin sister of the deceased Trupti. However, the defence has not led any evidence to demolish the testimony of prosecution witnesses that the letters were infact sent by the deceased Trupti. The said letters bear postal stamps proving that have been sent and received in due course. The brothers of Trupti who knew Trupti's handwriting have stated that the letters are in the handwriting of their sister. The said letters were produced from proper source, that is from the prosecution witness who were the brothers of Trupti. The said letters were received at the Bhor house of Trupti's parents. Section 47 of the Indian Evidence Act, 1872 reads as under :

> **47. Opinion as to handwriting, when relevant -** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

> **Explanation-** A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

9. In the present case, the letters were received by Trupti's brothers in ordinary course through post at Bhor. The letters were posted at Shindewadi, which was the matrimonial home of Trupti. The handwriting of Trupti has been identified by her brothers who were acquainted with the handwriting of Trupti. Therefore there is no reason to disbelieve that the said letters Exhibit 16 to 24 are letters written by Trupti to her brothers.

10. The contents of the said letters clearly make out a case of mental and physical torture of Trupti at the hands of her husband Accused. The mental torture to which Trupti was subjected was the worst that could be inflicted upon a women by her husband. The accused kept taunting Trupti that she was having illicit sexual relationship with her own relatives including her brothers who have themselves testified that the accused had accused them of having illicit relations with their own sister Trupti. These charges are found in the testimony of the brothers of P.W.No.2, 3 and 5 as also in their statements recorded by the police. A married women may tolerate physical beating and torture but allegations and taunting by the husband of her having illicit relations with her own brothers is something that is beyond tolerance and it is this that led Trupti to end her life by jumping into the well. Clearly, the accused was afflicted by a morbid suspicion about his wife’s relations with her own brothers and he therefore even prevented her from visiting her parents house at Bombay.

11. The fact that Trupti committed suicide within six months of her marriage is an indication of the acute and intolerable harassment and mental torture to which she was subjected by her husband. Section 113(a) of the Indian Evidence Act raises a presumption of abetment of suicide by the husband and his relatives when a married women commits suicide within a period of seven years from the date of her marriage, when the husband or his relatives had subjected her to cruelty. The mental torture to which Trupti was subjected clearly falls within the definition of cruelty set out under Section 498(a) of the Indian Penal Code. In the present case, though the evidence establishes that the body of Trupti was pulled out of the well, the post-mortem report proves that Trupti had died of asphyxia due to drowning. The incident took place within six months of Trupti's marriage, a marriage which was marred by extreme cruelty on the part of the accused husband to his deceased wife Trupti all on account of his morbid suspicion of her character. Thus the offences under Section 306 and 498(a) of Indian Penal Code are clearly made out and the Learned Trial Court has rightly convicted

the accused of the said offences. The order of the Learned Trial Court is a well reasoned order. We find no reason to interfere with the same and hence the appeal is rejected.

12. Learned Advocate Mr. Naik appearing on behalf of the Appellant/Accused prays that the period of sentence be reduced to two years. He states that the Accused/Appellant is now living a happy married life and has one child who is studying in the third standard at Pune and that his family life will now be completely damaged if he has to go to jail after a lapse of twelve years. The Trial Court in my opinion has been quite lenient in sentencing the Appellant to imprisonment for a period of only five years for the offence punishable under Section 306 of Indian Penal Code and for only two years for the offence punishable under Section 498(a) of Indian Penal Code. The Trial Court has further directed both the sentences to run concurrent. The accused will therefore have to undergo sentence of imprisonment for only five years. The accused was in jail as under trial for only three days and for a period of about fifteen

days after his arrest. In the circumstances, I do not find any scope for reducing the period of imprisonment. In view of the above, the appeal is dismissed and disposed of.

13. Sentence is maintained. Bail bonds to stand cancelled. Accused to surrender within four weeks from today.

(A.S. AGUIAR,J.)